

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE TREMONT SECURITIES LAW, STATE LAW AND INSURANCE LITIGATION	: Master File No. 08 Civ. 11117(TPG)
_____:	
This Document Relates to:	:
ELENDOW FUND, LLC	: 10 Civ. 9061 (TPG)
Plaintiff,	: ECF Case
- against -	: Electronically Filed
RYE SELECT BROAD MARKET XL FUND, L.P., et al.	: <b>ANSWER AND</b>
Defendants.	: <b>AFFIRMATIVE DEFENSES</b>
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Defendants Rye Investment Management, Tremont Capital Management, Inc., Tremont Group Holdings, Inc., Tremont Partners, Inc., Rupert Allan, Jim Mitchell and Robert Schulman (collectively, the "Defendants"), by their attorneys, answer the complaint in this action (the "Complaint") as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint.
2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Complaint.
3. Deny the allegations of Paragraph 3 of the Complaint.
4. Deny the allegations of Paragraph 4 of the Complaint.
5. Deny the allegations of Paragraph 5 of the Complaint.
6. Deny the allegations of Paragraph 6 of the Complaint.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of the Complaint.

8. Deny the allegations of Paragraph 8 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of that paragraph.

9. Deny the allegations of Paragraph 9 of the Complaint.

10. Deny the allegations of Paragraph 10 of the Complaint, except admit that this Court has subject matter jurisdiction over this action.

11. Deny the allegations of Paragraph 11 of the Complaint, except admit that venue is proper in this District.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 of the Complaint.

13. Deny the allegations of Paragraph 13 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the second, third, fourth and fifth sentences of that paragraph.

14. Deny the allegations of Paragraph 14 of the Complaint, except admit the allegations of the first sentence of that paragraph.

15. Deny the allegations of Paragraph 15 of the Complaint, except admit the allegations of the first and fourth sentences of that paragraph.

16. Deny the allegations of Paragraph 16 of the Complaint, except admit the allegations of the second sentence of that paragraph.

17. Deny the allegations of Paragraph 17 of the Complaint, except admit the allegations of the first and third and fourth sentences of that paragraph.

18. Deny the allegations of Paragraph 18 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of that paragraph.

19. Deny the allegations of Paragraph 19 of the Complaint.

20. Admit the allegations of Paragraph 20 of the Complaint.

21. Deny the allegations of Paragraph 21 of the Complaint, except admit the allegations of the second, fourth, sixth and seventh sentences of that paragraph.

22. Deny the allegations of Paragraph 22 of the Complaint.

23. Deny the allegations of Paragraph 23 of the Complaint.

24. Admit the allegations of Paragraph 24 of the Complaint.

25. Admit the allegations of Paragraph 25 of the Complaint.

26. Admit the allegations of Paragraph 26 of the Complaint.

27. Deny the allegations of Paragraph 27 of the Complaint.

28. Admit the allegations of Paragraph 28 of the Complaint.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 29 of the Complaint, except admit the allegations of the first and second sentences of that paragraph.

30. Deny the allegations of Paragraph 30 of the Complaint.

31. Admit the allegations of Paragraph 31 of the Complaint.

32. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 32 of the Complaint, except admit the allegations of the second and third sentences of that paragraph.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 33 of the Complaint.

34. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 34 of the Complaint.

35. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 35 of the Complaint.

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 36 of the Complaint.

37. Deny the allegations of Paragraph 37 of the Complaint.

38. Deny the allegations of Paragraph 38 of the Complaint.

39. Deny the allegations of Paragraph 39 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the second, third and fourth sentences of that paragraph.

40. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 40 of the Complaint.

41. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 41 of the Complaint.

42. Deny the allegations of Paragraph 42 of the Complaint.

43. Deny the allegations of Paragraph 43 of the Complaint.

44. Deny the allegations of Paragraph 44 of the Complaint.

45. Deny the allegations of Paragraph 45 of the Complaint.

46. Deny the allegations of Paragraph 46 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of that paragraph.

47. Deny the allegations of Paragraph 47 of the Complaint.

48. Deny the allegations of Paragraph 48 of the Complaint.

49. Deny the allegations of Paragraph 49 of the Complaint.

50. Deny the allegations of Paragraph 50 of the Complaint.

51. Deny the allegations of Paragraph 51 of the Complaint.

52. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 52 of the Complaint.

53. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 53 of the Complaint.

54. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 54 of the Complaint.

55. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 55 of the Complaint.

56. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 56 of the Complaint.

57. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 57 of the Complaint.

58. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 58 of the Complaint.

59. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 59 of the Complaint.

60. Deny the allegations of Paragraph 60 of the Complaint.

61. Deny the allegations of Paragraph 61 of the Complaint.

62. Deny the allegations of Paragraph 62 of the Complaint.

63. Deny the allegations of Paragraph 63 of the Complaint.

64. Deny the allegations of Paragraph 64 of the Complaint.

65. Deny the allegations of Paragraph 65 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the last sentence of that paragraph.

66. Deny the allegations of Paragraph 66 of the Complaint.

67. Deny the allegations of Paragraph 67 of the Complaint.

68. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 68 of the Complaint, except admit the allegations of the first sentence of that paragraph.

69. Deny the allegations of Paragraph 69 of the Complaint and respectfully refer the Court to the affidavit for the complete contents thereof.

70. Deny the allegations of Paragraph 70 of the Complaint and respectfully refer the Court to the affidavit for the complete contents thereof.

71. Deny the allegations of Paragraph 71 of the Complaint.

72. Admit the allegations of Paragraph 72 of the Complaint.

73. Deny the allegations of Paragraph 73 of the Complaint.

74. Deny the allegations of Paragraph 74 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the second and third sentences of that paragraph.

75. Deny the allegations of Paragraph 75 of the Complaint.

76. Deny the allegations of Paragraph 76 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of that paragraph.

77. Deny the allegations of Paragraph 77 of the Complaint.

78. Deny the allegations of Paragraph 78 of the Complaint and respectfully refer the Court to the website for the complete contents thereof.

79. Admit the allegations of Paragraph 79 of the Complaint.

80. Deny the allegations of Paragraph 80 of the Complaint.

81. Deny the allegations of Paragraph 81 of the Complaint.

82. Deny the allegations of Paragraph 82 of the Complaint, except admit the allegations of the first and second sentences of that paragraph.

83. Deny the allegations of Paragraph 83 of the Complaint and respectfully refer the Court to the Schedule 14A Proxy Statement for the complete contents thereof.

84. Deny the allegations of Paragraph 84 of the Complaint, except admit the allegations of the first sentence of that paragraph.

85. Deny the allegations of Paragraph 85 of the Complaint and respectfully refer the Court to the Form 10-K for the complete contents thereof.

86. Deny the allegations of Paragraph 86 of the Complaint and respectfully refer the Court to the Form 10-K for the complete contents thereof.

87. Deny the allegations of Paragraph 87 of the Complaint and respectfully refer the Court to the Proxy Statement for the complete contents thereof.

88. Deny the allegations of Paragraph 88 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of that paragraph and respectfully refer the Court to the Proxy Statement for the complete contents thereof.

89. Deny the allegations of Paragraph 89 of the Complaint and respectfully refer the Court to the Proxy Statement for the complete contents thereof.

90. Deny the allegations of Paragraph 90 of the Complaint and respectfully refer the Court to the Proxy Statement for the complete contents thereof.

91. Deny the allegations of Paragraph 91 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of that paragraph and respectfully refer the Court to the Proxy Statement for the complete contents thereof.

92. Deny the allegations of Paragraph 92 of the Complaint and respectfully refer the Court to the Proxy Statement for the complete contents thereof.

93. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 93 of the Complaint.

94. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 94 of the Complaint.

95. Deny the allegations of Paragraph 95 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the third sentence of that paragraph and admit the allegations of the first sentence of that paragraph.

96. Admit the allegations of Paragraph 96 of the Complaint.

97. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 97 of the Complaint, except admit the allegations of the first, second and fourth sentences of that paragraph.

98. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 98 of the Complaint.

99. Deny the allegations of Paragraph 99 of the Complaint and respectfully refer the Court to the press release for the complete contents thereof.



100. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 100 of the Complaint.

101. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 101 of the Complaint.

102. Deny the allegations of Paragraph 102 of the Complaint, except admit the allegations of the first sentence of that paragraph.

103. Deny the allegations of Paragraph 103 of the Complaint and respectfully refer the Court to the private placement memoranda for the complete contents thereof.

104. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 104 of the Complaint.

105. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 105 of the Complaint.

106. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 106 of the Complaint.

107. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 107 of the Complaint.

108. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 107 of the Complaint.

109. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 109 of the Complaint.

110. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 110 of the Complaint.

111. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 111 of the Complaint.

112. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 112 of the Complaint.

113. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 113 of the Complaint.

114. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 114 of the Complaint.

115. Deny the allegations of Paragraph 115 of the Complaint and respectfully refer the Court to the Proxy Statement and the employment agreements for the complete contents thereof.

116. Deny the allegations of Paragraph 116 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of that paragraph.

117. Deny the allegations of Paragraph 117 of the Complaint.

118. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 118 of the Complaint.

119. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 119 of the Complaint.

120. Deny the allegations of Paragraph 120 of the Complaint.

121. Deny the allegations of Paragraph 121 of the Complaint.

122. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 122 of the Complaint, except admit that Mr. Murphy served as a director of Tremont Group Holdings.

123. Deny the allegations of Paragraph 123 of the Complaint.

124. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 124 of the Complaint, except admit that Mr. Wolfgruber served as a director of Tremont Group Holdings.

125. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 125 of the Complaint.

126. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 126 of the Complaint.

127. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 127 of the Complaint.

128. Deny the allegations of Paragraph 128 of the Complaint and respectfully refer the Court to the prospectuses for the complete contents thereof.

129. Deny the allegations of Paragraph 129 of the Complaint.

130. Deny the allegations of Paragraph 130 of the Complaint.

131. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 131 of the Complaint.

132. Admit the allegations of Paragraph 132 of the Complaint.

133. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 133 of the Complaint.

134. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 134 of the Complaint.

135. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 135 of the Complaint.

136. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 136 of the Complaint.

137. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 137 of the Complaint.

138. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 138 of the Complaint.

139. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 139 of the Complaint.

140. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 140 of the Complaint.

141. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 141 of the Complaint.

142. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 142 of the Complaint.

143. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 143 of the Complaint.

144. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 144 of the Complaint.

145. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 145 of the Complaint.

146. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 146 of the Complaint.

147. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 147 of the Complaint.

148. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 148 of the Complaint.

149. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 149 of the Complaint.

150. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 150 of the Complaint.

151. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 151 of the Complaint.

152. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 152 of the Complaint.

153. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 153 of the Complaint.

154. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 154 of the Complaint.

155. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 155 of the Complaint.

156. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 156 of the Complaint.

157. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 157 of the Complaint.

158. In response to Paragraph 158 of the Complaint, Defendants repeat and incorporate each and every one of the foregoing paragraphs, as if fully set forth herein.

159. Deny the allegations of Paragraph 159 of the Complaint and state that it is a conclusion of law to which no response is required.

160. Deny the allegations of Paragraph 160 of the Complaint.

161. Deny the allegations of Paragraph 161 of the Complaint.

162. Deny the allegations of Paragraph 162 of the Complaint.

163. Deny the allegations of Paragraph 163 of the Complaint.

164. In response to Paragraph 164 of the Complaint, Defendants repeat and incorporate each and every one of the foregoing paragraphs, as if fully set forth herein.

165. Deny the allegations of Paragraph 165 of the Complaint.

166. Deny the allegations of Paragraph 166 of the Complaint.

167. Deny the allegations of Paragraph 167 of the Complaint.

168. In response to Paragraph 168 of the Complaint, Defendants repeat and incorporate each and every one of the foregoing paragraphs, as if fully set forth herein.

169. Deny the allegations of Paragraph 169 of the Complaint.

170. Deny the allegations of Paragraph 170 of the Complaint.

171. Deny the allegations of Paragraph 171 of the Complaint.

172. Deny the allegations of Paragraph 172 of the Complaint.

173. Deny the allegations of Paragraph 173 of the Complaint.

174. Deny the allegations of Paragraph 174 of the Complaint.

175. Deny the allegations of Paragraph 175 of the Complaint.

176. In response to Paragraph 176 of the Complaint, Defendants repeat and incorporate each and every one of the foregoing paragraphs, as if fully set forth herein.

177. Deny the allegations of Paragraph 177 of the Complaint.

178. Deny the allegations of Paragraph 178 of the Complaint.

179. Deny the allegations of Paragraph 179 of the Complaint.

180. Deny the allegations of Paragraph 180 of the Complaint.

181. In response to Paragraph 181 of the Complaint, Defendants repeat and incorporate each and every one of the foregoing paragraphs, as if fully set forth herein.

182. Deny the allegations of Paragraph 182 of the Complaint.

183. Deny the allegations of Paragraph 183 of the Complaint.

184. Deny the allegations of Paragraph 184 of the Complaint.

185. Deny the allegations of Paragraph 185 of the Complaint.

186. In response to Paragraph 186 of the Complaint, Defendants repeat and incorporate each and every one of the foregoing paragraphs, as if fully set forth herein.

187. Deny the allegations of Paragraph 187 of the Complaint.

188. Deny the allegations of Paragraph 188 of the Complaint.

189. In response to Paragraph 189 of the Complaint, Defendants repeat and incorporate each and every one of the foregoing paragraphs, as if fully set forth herein.

190. Deny the allegations of Paragraph 190 of the Complaint.

191. Deny the allegations of Paragraph 191 of the Complaint.

192. Deny the allegations of Paragraph 192 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the last sentence of that paragraph.

193. In response to Paragraph 193 of the Complaint, Defendants repeat and incorporate each and every one of the foregoing paragraphs, as if fully set forth herein.

194. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 194 of the Complaint.

195. Deny the allegations of Paragraph 195 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of that paragraph.

196. Deny the allegations of Paragraph 196 of the Complaint.

197. Deny the allegations of Paragraph 197 of the Complaint.

198. In response to Paragraph 198 of the Complaint, Defendants repeat and incorporate each and every one of the foregoing paragraphs, as if fully set forth herein.

199. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 199 of the Complaint.

200. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 200 of the Complaint.

201. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 201 of the Complaint.

202. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 202 of the Complaint.

#### **FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a cause of action against Defendants.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff lacks standing to maintain one or more of the claims alleged in the Complaint.

#### **THIRD AFFIRMATIVE DEFENSE**

Plaintiff failed to conduct or was negligent in conducting due diligence on the Broad Market XL Fund, the Broad Market Fund and Madoff. It therefore is barred by the doctrine of comparative or contributory negligence from recovering all or part of the damages to which it claims entitlement in the event Defendants are found liable.



**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by applicable statutes of limitations.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff failed to mitigate damages, if any.

WHEREFORE, Defendants demand judgment against Plaintiff as follows:

- (a) Dismissing the entire action with prejudice;
- (b) Granting Defendants their reasonable costs, expenses and attorneys' fees; and
- (c) Granting such other and further relief as this Court may deem just and proper.

DATED: October 24, 2011

Respectfully submitted,

SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP

/s/ Seth M. Schwartz  
Seth M. Schwartz  
(Seth.Schwartz@Skadden.com)  
Jason C. Vigna  
(Jason.Vigna@Skadden.com)  
Four Times Square  
New York, New York 10036  
(212) 735-3000

Attorneys for Defendants  
Rye Investment Management,  
Tremont Capital Management, Inc.  
Tremont Group Holdings, Inc.,  
Tremont Partners, Inc., Rupert Allan  
Jim Mitchell and Robert Schulman